

### REMARKS

Applicants respectfully request favorable reconsideration and reexamination of this application.

Claim 11 has been revised to correct a lack of antecedent basis and to address the written description requirement.

New claim 26 is supported by, for example, page 3, line 17 to page 4, line 6, page 4, lines 21-24, and Figs. 3-5 in the Specification.

There is no new matter. Claims 11-18, 20-24, and 26 are pending.

#### Claim Rejections – 35 USC § 112

Claims 11-18 and 20-24 were rejected under 35 USC 112, first paragraph. Claim 11 has been revised to delete the rejected limitation of “the adhering liquid moving groove being provided without a fillet.” Applicants do not concede the correctness of the rejection.

The Office Action rejected the claims alleging that the feature of “the adhering liquid moving groove having a lower end positioned below a surface of the liquid when the well contains a desired amount of the liquid” is not supported in the Specification. Applicants respectfully traverse. Applicants submit that Figs. 4-5, for example, clearly show the groove having a lower end positioned below a surface of the liquid, and the feature is further supported by, for example, page 5, lines 10-12 in the Specification. Applicants respectfully request that the rejection be withdrawn.

#### Claim Rejections – 35 USC § 103

Claims 11-14, 16-18, 20-22, and 24 were rejected under 35 USC 103(a) as being unpatentable over Hiramatsu et al. (WO01/196882, English version referenced in the rejection is US 2002/0155616) in view of Jenkins et al. (US 4847050). Applicants traverse the rejection.

Regarding claim 11, the rejection conceded that Hiramatsu et al. does not teach the adhering liquid moving groove feature (see page 5 of the Office Action). Jenkins et al. does not remedy this deficiency.

The rejection alleged that Jenkins et al. teaches grooves that assist in guiding the circulating hydrating liquid. See pages 5-6 of the Office Action. The rejection stated that “it would have been obvious to one of ordinary skill in the art...to modify the wells of the cartridge

of Hiramatsu et al. with the adhering liquid moving groove of Jenkins et al.” Applicants respectfully disagree.

If the rejection is attempting to identify a structure in Jenkins et al. that assists in guiding the circulating hydrating liquid, Applicants respectfully submit that the structure in Jenkins et al. cannot be considered to be analogous to the recited groove. Jenkins et al. teaches that “generally planar members 40 extend diagonally outwardly from the corners of the container 10 to assist in guiding of the circulating hydrating liquid” (column 4, lines 53-56; also see FIGS. 1-2). Thus, Jenkins et al. teaches that the planar structures are configured to assist in guiding of the circulating hydrating liquid, not the space between the members 36. The planar structures taught in Jenkins et al. cannot reasonably be considered to be a groove. Therefore, Jenkins et al. does not remedy the deficiency of Hiramatsu et al. conceded in the rejection.

If the rejection is identifying the space between the “finger-like members 36” in Jenkins et al. as teaching a structure that can be considered to be the recited groove, then the rejection must fail because Jenkins et al. does not even suggest that the space between the members 36 are configured to guide the circulating hydrating liquid. Jenkins et al. teaches that planar members 40 assist in guiding of the circulating hydrating liquid, and that the space between the finger-like members is a high energy tablet-receiving recess. Thus, the rejection has unreasonably switched the roles of two very different structures taught in Jenkins et al. Jenkins et al. does not teach a groove that assist in guiding of the circulating hydrating liquid as suggested by the Examiner.

Even if Jenkins et al. teaches a groove that can assist in guiding the circulating hydrating liquid, which Applicants do not concede, the rejection has mischaracterized the definition of “guiding the circulating hydrating liquid.” In fact, “guiding the circulating hydrating liquid” does not teach or suggest downwardly moving the liquid which adheres on a peripheral portion of the upper opening of the well and on the closure by overcoming a surface tension of the adhering liquid. Jenkins et al. teaches “that the provision of any suitable projections disposed either on the floor and/or from the walls of the container which serve to define both a tablet-receiving recess and recirculating gaps to permit the circulation of hydrating liquid through the high energy zone act in use to enhance the application of ultrasonic energy to efficiently and expeditiously dissolve the tablet material. Any such structural combination which forms the relatively high energy tablet-receiving recess and defines a relatively high ultrasonic energy zone coupled with and communicating [sic] recirculating channels lies within the contemplation of the

present invention” (column 6, lines 8-21). Thus, Jenkins et al. teaches that the circulation of hydrating liquid is for providing ultrasonic energy to the tablets for dissolving the tablet material. Jenkins et al. does not teach or suggest any structure that can be considered to be an adhering liquid moving groove for downwardly moving the liquid which adheres on a peripheral portion of the upper opening of the well and on the closure by overcoming a surface tension of the adhering liquid. Therefore, Jenkins et al. does not remedy the deficiency of Hiramatsu et al. conceded in the rejection.

The rejection alleged that Jenkins et al. teaches that the “projections may be disposed in ... any convenient location within the container” and that it would have been obvious to provide the structures for delivering ultrasonic energy to the tablet at the top of the container. This is nothing more than a conclusory statement without any analysis as to how and/or why a person skilled in the art would consider the top of the containers to be a “convenient location.” The rejection has failed to provide any basis or reason as to why one skilled in the art would place the structures for delivering ultrasonic energy to the tablet at the top of the container.

Further, the rejection alleged that there has been no “scientific statistical data or a working model” to demonstrate that projections and channels at the top of the container would render the device from working as originally intended. See pages 2-3 of the Office Action.

Applicants respectfully submit that statistical data or a working model is not necessary for one skilled in the art to recognize readily that the projections and channels configured for receiving the tablets to improve sonication of the tablets would not work as intended if the projections and channels are placed at the top of the container. Gravity would necessarily place the tablets at the bottom of the container away from the top projections and channels. For example, see FIG. 2 of Jenkins et al., which clearly shows the tablet 38 at the bottom of the well. Thus, even without statistical data or a working model, one skilled in the art would understand that the Examiner’s suggested modification by necessity would place the channels at a location of the container such that they would not be able to receive the tablets as originally intended in Jenkins et al.

Further, the reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Therefore, Jenkins et al. must be considered in its entirety, including any portions that would

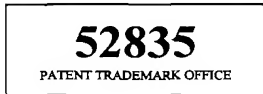
limit the “convenient location” to teach away from the claims. Jenkins et al. teaches the “convenient location” and “convenient orientation” of the projections 30 and channels 32 to be limited in such a way as to define the recess 38 at or near the bottom of the receptacle. Thus, the projections 30 and channels 32 cannot be disposed in “any” orientation or in “any” location as suggested by the rejection. Further, Jenkins et al. limits the “convenient location” because Jenkins et al. teaches a device requiring a self-healing pad 114 of a lid structure (106, 108) at the top of the well. Thus, providing projections 30 and/or channels 32 at the same location as the pad 114 would interfere with the pad 114, preventing the lid structure from sealing the device as originally intended. Accordingly, one skilled in the art understands that the top of the well where the pad 114 is provided is not a convenient location for the projections 30 and channels 32. Thus, Jenkins et al. teaches that the location of the upper opening flush with the upper surface of the receptacle is not a convenient location and/or convenient orientation for providing the projections 30 and channels 32.

In contrast, claim 11 recites an inner surface provided with an adhering liquid moving groove extending from the upper opening flush with the upper surface of the receptacle body to an intermediate position short of the bottom of the receptacle body. Jenkins et al. fails to teach this feature. Therefore, Jenkins et al. does not remedy the deficiencies of Hiramatsu et al. conceded in the rejection.

For at least the above reasons, claim 11 is patentable over Hiramatsu et al. in view of Jenkins et al. Claims 12-14, 16-18, 20-22, and 24 are also patentable for at least the same reasons as claim 11 from which they depend. Applicants respectfully request a favorable reconsideration of the claims.

Application Serial No. 10/539231  
Reply to Action dated June 29, 2010

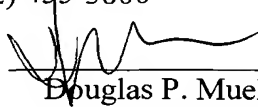
In view of the above amendments and remarks, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned attorney-of record, Douglas P. Mueller (Reg. No. 30,300), at (612) 455-3804.



Dated: December 28, 2010

Respectfully submitted,

HAMRE, SCHUMANN, MUELLER &  
LARSON, P.C.  
P.O. Box 2902  
Minneapolis, MN 55402-0902  
(612) 455-3800

By:   
Douglas P. Mueller  
Reg. No. 30,300  
DPM/ajk